



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/162393

PRELIMINARY RECITALS

Pursuant to a petition filed December 02, 2014, under Wis. Stat. §§46.85, 49.85(4), and 227.44 and Wis. Admin. Code §§HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services to intercept the petitioner's income tax refund and apply it against a prior overpayment of FoodShare benefits (FS), a telephonic hearing was held on January 22, 2015.

The issue for determination is whether the Department correctly seeks to intercept the Petitioner's tax refund to collect an overpayment of FS.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, IM Specialist Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 4, 2014 the agency issued two notices of FS overpayment to petitioner's address of record. The total overpayment was for \$6464. The reason for the overpayment was stated as "misrepresentation of or failure to report earned income due to client error." See Exhibits 1 and 2.
3. The petitioner did not appeal the overpayment notices.
4. On July 2, 2014 the agency issued a repayment agreement for the FS overpayments to petitioner's address of record.
5. On August 4, 2014 the agency issued a Dunning notice regarding the FS overpayment to petitioner's address of record.
6. On September 3, 2014 the agency issued a Dunning notice regarding the FS overpayment to petitioner's address of record.
7. On October 2, 2014 the agency issued a Dunning notice regarding the FS overpayment to petitioner's address of record.
8. On November 14, 2014 the Public Assistance Collection Unit issued a notice of tax intercept regarding the FS overpayments to the petitioner at her address of record.

DISCUSSION

Wis. Stat. §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2)(emphasis added). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

Petitioner filed this appeal to contest the overpayments themselves. The problem is that the agency met its burden by showing that it mailed the overpayment notices to her address of record and no mail was returned. Petitioner did not appeal for a hearing within 90 days of the overpayment notices and did not rebut the agency's prima facie case. She has therefore "sat" upon her rights to appeal the overpayment and consequently, lost them. State law provides that the Division of Hearings and Appeals now cannot hear the issue of who is liable for the claim as it concerns the underlying overpayment, as it was not timely filed. No exception applies here.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Petitioner may contact the PACU to discuss repayment options. The state income tax refund certification of a public assistance debt must be sustained.

CONCLUSIONS OF LAW

1. The Petitioner was overpaid FS in the amount of \$6464.
2. The Department may certify the sum of \$6464 as an amount due and may proceed with the action to intercept the Petitioner's income tax refund.

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of February, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 4, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit